Chapter 173-505 WAC

INSTREAM RESOURCES PROTECTION AND WATER RESOURCES PROGRAM

Stillaguamish River Basin

Water Resources Inventory Area (WRIA) 5

WAC 173-505-010 General provisions – Authority and Applicability.

(1) This chapter is adopted under the authority of the Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Water Well Construction Act (chapter 18.104 RCW), Water Resource Management (chapter 90.42 RCW), Regulation of Public Ground Waters (chapter 90.44 RCW), and Water Resources Management Program (chapter 173-500 WAC).

(2) This chapter applies to all surface waters that drain within the Stillaguamish River basin, also known as water resources inventory area (WRIA) 5, including its tributaries and areas adjacent to the mouth of the Stillaguamish River that drain to salt water; and all ground water hydraulically connected with those surface waters. This chapter applies to the use and appropriation of surface and ground water within the

Stillaguamish River basin. The geographic area of WRIA 5 is defined in WAC 173-500-040 and this chapter.

(3) This chapter shall not affect existing water rights, including perfected riparian rights or other appropriative rights existing on the effective date of this chapter, unless otherwise provided for in the water right in question.

(4) This chapter shall also not affect federal Indian and non-Indian reserved rights. The Stillaguamish Tribe and the Tulalip Tribes each have a claim for a treaty-derived off-reservation instream flow right with senior priority. The actual existence of such rights can only be adjudicated in federal or state court.

(5) This chapter does not limit the department's authority to establish instream flow requirements or conditions under other laws including hydropower licensing under RCW 90.48.260.

WAC 173-505-020 Purpose.

(1) The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Stillaguamish River basin with instream flows and levels necessary to protect and preserve wildlife, fish, scenic, aesthetic, recreation, water quality and other environmental values, navigational values, and stock water requirements.

(2) The chapter creates a reservation of adequate and safe supplies of potable water to satisfy human domestic needs.

(3) This chapter sets forth the department's policies to guide the protection, utilization and management of Stillaguamish River basin surface water and interrelated ground water resources. It establishes instream flows and closures, and sets forth a program for administration of future water allocation and use.

WAC 173-505-030 Definitions.

For the purposes of this chapter, the following definitions shall be used:

(1) "**Allocation"** means the designating of specific amounts of water for specific beneficial uses.

(2) "**Appropriation**" means the process of legally acquiring the right to specific amounts of water for beneficial uses, as consistent with the requirements of the ground and surface water codes and other applicable water resource statutes.

(3) "**Consumptive use**" means a use of water that reduces the amount of water in the water source.

(4) "**Department**" means the Washington state department of ecology.

(5) **"Domestic water use"** means, for the purposes of this chapter, potable water to satisfy human domestic needs, including water used for drinking, bathing, sanitary purposes, cooking, laundering, and other incidental uses. This term applies to both residential and small business uses. It includes limited outdoor use, specifically the non-commercial watering of ornamental plants and small vegetable gardens, and does not include lawn irrigation.

(6) "**Instream Flow**" means a stream flow level set in rule that is required to protect and preserve fish, wildlife, scenic, aesthetic and other environmental values, and navigational values. The term "instream flow" means a base flow under chapter 90.54 RCW, a minimum flow under chapter 90.03 or 90.22 RCW, or a minimum instream flow under chapter 90.82 RCW.

(7) "**Mitigation Plan**" means a voluntary plan submitted by a project proponent to offset the impacts of proposed water use. A mitigation plan must show that the withdrawal with mitigation in place will not impair senior water rights, including instream flow rights. Mitigation requires that when a withdrawal occurs when the natural flow is low, such as in late summer and early fall, any water withdrawn must be replaced by equal or greater amounts of water of comparable quality in the area of the stream affected by the withdrawal.

(8) "**Nonconsumptive use**" means a use of water that does not reduce the amount of water in the water source.

(9) "**Public water supply**" means any water supply intended or used for human consumption and community uses by more than one single-family residence.

(10) **"Public water system"** means any system providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm.

(11) "**Reservation**" means an allocation of water for future beneficial uses. The priority date of a given allocation is the same as the effective date of the reservation.

(12) "**Stream management unit**" means a stream segment, reach, or tributary used to describe the part of the relevant stream to which a particular instream flow level applies. Most of these units contain a control station. A map with the stream reaches delineated is included in this chapter. (Refer to WAC 175-505-190.)

(13) **"Withdrawal"** means the appropriation or use of ground water, or the diversion or use of surface water.

WAC 173-505-040 Establishment of stream management units.

The department hereby establishes the following stream management units.

Stream Management Unit Information

(N.F. is North Fork; S.F. is South Fork)

Stream Management Unit Name	Control Point By River Mile (RM) or Latitude (Lat.) and Longitude (Long.)	Stream Management Reach
Stillaguamish Mainstem:	Stillaguamish River nr Silvana USGS Sta. #12167700 RM 11.2 Lat. 48 11 48, Long. 122 12 43	From the mouth at Port Susan to the confluence of N.F of the Stillaguamish River and the S.F of the Stillaguamish River.
North Fork (N.F.) Stillaguamish River:		
N.F. Stillaguamish River at Arlington, WA	USGS Sta. #12167000 RM 6.5 Lat. 48 15 42,	From confluence with the S.F Stillaguamish to river mile 17.6.

	Long. 122 02 47	
N.F. Stillaguamish River at Oso	Ecology Sta. # 05B090 RM 17.6. Lat. 48 16 20, Long. 122 53 17	From river mile 17.6 to headwaters except Squire Creek, Deer Creek, and Boulder River.
South Fork (S. F.) Stillaguamish River:		
S.F. Stillaguamish River at River Meadows Park	Ecology Sta. #05A105 RM 24.4. Lat. 48 05 43, Long. 121 58 29	From confluence with the N.F Stillaguamish River to RM 34.9, except Jim and Canyon Creeks.
S.F. Stillaguamish River at Granite Falls, WA	USGS Sta. #12161000 RM 34.9 Lat. 48 06 13, Long. 121 56 37	From S.F. Stillaguamish River at RM 34.9 to headwaters.
Stillaguamish River Tributaries:		
Church Creek	At Hwy 532 crossing near fish ladder	From mouth to headwaters
Trib 30- Glade Bekken Creek	At Jordan Road crossing	From mouth to headwaters
Portage Creek	At 208th St NE & 66th Ave. crossing	From mouth to headwaters
	Portage Creek Tributaries:	
Fish Creek	At Sill Rd. crossing	From mouth to headwaters
Pilchuck at Bridge 626	Ecology Sta. #05D070 RM 0.5 Lat. 48 12 49, Long. 122 13 06	From mouth to the Campground Bridge
Pilchuck at Campground Bridge	At Campground Bridge above falls at RM 11	From Campground Bridge to headwaters, except Lake Creek and Lake Cavanaugh
	Pilchuck CreekTributaries:	
Lake Creek	At tree farm bridge off Lake Cavenaugh Rd.	From mouth to headwaters, except Lake Cavanaugh
North Fork (N. F.) Stillaguamish River Tributaries:		
Squire Creek	Ecology Sta. 05H070 RM 1.0 Lat. 48 16 13, Long. 121 40 17	From mouth to headwaters.

Deer Creek	At Deer Creek Rd by the Ecology gauge #05C090	From mouth to headwaters.
Brooks Creek	At Brooks Creek Rd Bridge	From mouth to headwaters.
Montague Creek	At Hwy 530 bridge	From mouth to headwaters.
Rollins Creek	Off C Post off Hwy 530 about RM 1.0	From mouth to headwaters.
Boulder River	At Hwy 530 bridge	From mouth to headwaters.
French Creek	At Hwy 530 bridge	From mouth to headwaters.
Segelson Creek	At Swede Haven Rd bridge off Hwy 530	From mouth to headwaters.
Furland Creek	At Hwy 530 bridge	From mouth to headwaters.
Ashton Creek	At Hwy 530 bridge	From mouth to headwaters.
Grant Creek	At Hillis Rd bridge off Hwy 530	From mouth to headwaters.
Rock Creek	At RM 1.1	From mouth to headwaters.
Stream 0138 – Koonz Creek	At F & W bridge	From mouth to headwaters.
Harvey Creek	At side road crossing of Grandview Rd.	From mouth to headwaters.
South Fork (S. F.) Stillaguamish River Tributaries:		
Jim Creek at Whites Road	Ecology Sta. #05G070 RM 3.3 Lat. 48 10 41, Long. 122 03 07	From mouth to headwaters.
Jim Creek Tributaries:		
Siberia Creek	At mouth near 131st Ave NE, RM 0.0	From mouth to headwaters.
Canyon Creek nr. Masonic Park	Ecology Sta. #05F080 RM 5.0 Lat. 48 07 14, Long. 121 54 17	From mouth to headwaters.
Armstrong Creek	At fish hatchery	From mouth to headwaters.
Jordan Creek	At Jordan Rd. crossing	From mouth to headwaters.
Tiger Creek	Near Masonic Park, RM 1.6	From mouth to headwaters.

WAC 173-505-050 Establishment of instream flows.

(1) Instream flows established in this section protect stream flows from future withdrawals, and preserve flow levels that are necessary to protect wildlife, fish, water quality, scenic, aesthetic and other environmental values, navigational values, and stock watering requirements.

(2) Instream flows established in this section are water rights with a priority date the same as the effective date of this chapter.

(3) Instream flows are expressed in cubic feet per second (cfs). Instream flows are measured at the control point identified in WAC 173-505-040 of this chapter and apply to the stream management reach.

(4) Instream flows are to be protected from impairment by junior water rights. Except as provided in WAC 173-505-090, WAC 173-505-100, and WAC 173-505-120 junior water rights shall be exercised only when flow conditions provide enough water to satisfy senior rights, including instream flows set in this chapter. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(5) Stream flow requirements on existing water rights are not modified by this chapter. Existing water rights that include a provision that water use will be subject to future instream flows are now subject to the instream flows established in WAC 173-505-050.

(6) Instream flows are established for the stream management units in WAC 173-505-040, as follows:

Instream Flows for the Mainstem and North and South Forks, Stillaguamish River

(cubic feet per second)

			USGS Sta. # 12167000	Ecy station # 05B090	Ecy station # 05A105	USGS Sta. # 12164500
Month	Day	Stillaguamish RM 11.2	North Fork Stillaguamish RM 6.5	North Fork Stillaguamish RM 17.6	South Fork Stillaguamish RM 24.4	South Fork Stillaguamish RM 34.9
Jan.	1–31	3000	1200	915	2300	1200
Feb.	1–29	3000	1200	850	2300	1200
Mar.	1–15	3000	1300	850	2700	1600(closed)
	16-31	3000	1300	915	2700	1600(closed)
Apr.	1–30	3000	1300	915	2700	1600(closed)
May	1–31	2000	1300	915	2700	1600(closed)
Jun.	1–15	2000	1300	915	1750	1060(closed)
	16-30	2000	1400	650	1750(closed)	1060(closed)
Jul.	1–15	1500(closed)	1100(closed)	600(closed)	1750(closed)	1060(closed)
	16-31	1500(closed)	800(closed)	500(closed)	1300(closed)	700(closed)
Aug.	1–15	1500(closed)	800(closed)	425(closed)	1300(closed)	700(closed)
	16-31	1500(closed)	800(closed)	500(closed)	1300(closed)	700(closed)
Sep.	1–30	1500(closed)	800(closed)	850(closed)	1300(closed)	700(closed)

Oct.	1–15	2000(closed)	800(closed)	850(closed)	2600(closed)	1700(closed)
	16-31	2000	800	850(closed)	2600(closed)	1700(closed)
Nov.	1–15	2000	950	850	2600	1700
	16–30	2000	950	915	2600	1800
Dec.	1– 31	3000	1300	915	2600	1800

Instream flows for tributaries of
the mainstem and North and South Forks Stillaguamish River Basin

(cubic feet per second)

Month	Day	RM 3.4 Pilchuck Creek	RM 11.7 Pilchuck Creek	RM 1.0 Squire Creek	RM 4.2 Jim Creek	RM 4.3 Canyon Creek	RM 0.3 Lake Creek	RM 1.3 Deer Creek	RM 0.3 Brooks Creek
Jan.	1-31	130	98	160	250	400	21	411	39
Feb.	1-29	170	98	280	250	400	21	411	39
Mar.	1-15	180	98	280	250	425	21	474	68
Mar.	16-31	180	98	280	250	425	21	474	68
Apr.	1-30	180	98	280	250	425	21	474	68
May	1-31	180	98	280	250	425	21	474	68
Jun.	1-15	180	98	280	250	425	21	313	45
Jun.	16-31	170	98	280	180	350	21	313	45
Jul.	1-31	170	98	240	180	350	21	195	45
Aug.	1-31	170	98	200	180	350	21	88	17
Sep.	1-30	170	98	200	180	350	21	353	17
Oct.	1-31	170	98	200	250	350	21	617	39
Nov.	1-15	170	98	160	250	400	21	411	39
Nov.	16-30	130	98	160	250	400	21	411	39
Dec.	1-31	130	98	160	250	400	21	411	39

Instream flows for tributaries of
the mainstem and North and South Forks Stillaguamish River Basin

(cubic feet per second)

Month	Day	RM 0.3 Montague Creek	RM 1.0 Rollins Creek	RM 0.5 Boulder River	RM 0.4 French Creek	RM 0.3 Segelson Creek	RM 0.2 Furland Creek	RM 0.2 Ashton Creek	RM 0.1 Grant Creek
Jan.	1-31	29	47	167	56	47	33	34	67
Feb.	1-29	29	47	167	56	47	33	34	67
Mar.	1-15	53	80	203	73	79	44	46	87
Mar.	16-31	53	80	203	73	79	44	46	87
Apr.	1-30	53	80	203	73	79	44	46	87
May	1-31	53	80	203	73	79	44	46	87
Jun.	1-15	35	53	134	48	52	30	30	57
Jun.	16-31	35	53	134	48	52	30	30	57
Jul.	1-31	35	53	134	48	52	30	30	57
Aug.	1-31	12	20	154	18	20	10	10	23
Sep.	1-30	12	47	250	84	47	49	51	101
Oct.	1-31	29	47	167	84	47	49	51	101
Nov.	1-15	29	47	167	56	47	33	34	67
Nov.	16-30	29	47	167	56	47	33	34	67
Dec.	1-31	29	47	167	56	47	33	34	67

Instream flows for tributaries of
the mainstem and North and South Forks Stillaguamish River Basin

(cubic feet per second)

Month	Day	RM 2.1 Church Creek	RM 0.5 Glade Bekken Creek	RM 7.0 Portage River	RM 2.0 Fish Creek	RM 1.1 Rock Creek	RM 1.5 St 0138 Koonz Creek
Jan.	1-31	24	10	11	16	29	19
Feb.	1-29	24	10	11	16	29	19
Mar.	1-15	43	21	22	30	53	36
Mar.	16-31	43	21	22	30	53	36
Apr.	1-30	43	21	22	30	53	36
May	1-31	43	21	22	30	53	36
Jun.	1-15	28	14	14	20	35	24
Jun.	16-31	28	14	14	20	35	24
Jul.	1-31	28	14	14	20	35	24
Aug.	1-31	10	4	4	6	12	8
Sep.	1-30	10	4	4	6	29	19
Oct.	1-31	24	10	11	16	29	19
Nov.	1-15	24	10	11	16	29	19
Nov.	16-30	24	10	11	16	29	19
Dec.	1-31	24	10	11	16	29	19

Instream flows for tributaries of the mainstem and North and South Forks Stillaguamish River Basin

(cubic feet per second)

Month	Day	RM 1.5 Harvey Creek	RM 1.0 Armstrong Creek	RM 0.1 Jordan Creek	RM 1.6 St 0363 Tiger Creek	RM 0.0 Siberia Creek
Jan.	1-31	9	34	18	27	37
Feb.	1-29	9	34	18	27	37
Mar.	1-15	6	46	34	48	49
Mar.	16-31	6	46	34	48	49
Apr.	1-30	6	46	34	48	49
May	1-31	4	46	34	48	49
Jun.	1-15	4	30	22	32	32
Jun.	16-31	4	30	22	32	32
Jul.	1-31	4	30	22	32	32
Aug.	1-31	4	10	7	11	11
Sep.	1-30	4	51	18	11	27
Oct.	1-31	4	51	18	11	55
Nov.	1-15	9	34	18	27	37
Nov.	16-30	9	34	18	27	37
Dec.	1-31	9	34	18	27	37

WAC 173-505-060 Lakes and ponds.

(1) RCW 90.54.020(3) provides, in part, that the quality of the natural environment shall be protected, and where possible, enhanced, and lakes and ponds shall be retained substantially in their natural condition. The department has determined that further consumptive withdrawals would impact the lakes and ponds of the Stillaguamish River basin. Therefore the department closes all lakes and ponds in the Stillaguamish River basin, except for those lakes identified in WAC 173-505-060 (2)(a) and (2)(b), to any further consumptive appropriations, including all ground water hydraulically connected to these surface waters. Exceptions to the closures are identified in WAC 173-505-090, WAC 173-505-100, and WAC 173-505-120.

(2)(a) Withdrawals from Lake Cavanaugh shall be limited to only single domestic in-house uses.

(b) This chapter does not include those lakes within the Mt. Baker/Snoqualmie National Forest and lakes fully surrounded by Department of Natural Resources land.

WAC 173-505-070 Stream closures.

(1) The department determines that based on historical and current low flows and uses, no water is available for additional year-round appropriation from the streams and tributaries in the Stillaguamish River basin, as identified in WAC 173-505-040. Additional appropriation includes both new surface and ground water right permits and ground water withdrawals otherwise exempted from permit requirements under RCW 90.44.050. Therefore, with the exceptions provided in WAC 173-505-070(2), WAC 173-505-090, WAC 173-505-100 and WAC 173-505-120, all the rivers and streams in the Stillaguamish River basin, including ground water hydraulically connected to those surface waters, are closed to any further appropriations.

(2) The department finds that there is some water above the instream flows at specific locations and times of year that could be captured for storage or other projects that do not require long-term, reliable, predictable water supplies. Therefore the streams described in the table below have water available at the locations and for the time periods specified. These withdrawals are subject to the maximum allocations defined in WAC 173-505-110(2).

Periods when water is available, for specific streams and stream segments

Control station and river mile (RM)	**Open Period**
Stillaguamish River at RM 11.2	October 16-June 30
North Fork Stillaguamish River at RM 6.5	October 16-June 30
North Fork Stillaguamish River at RM 17.6	November 1–June 30
South Fork Stillaguamish River at RM 24.4	November 1-June 15
South Fork Stillaguamish River at RM 34.9	November 1-March 1
Pilchuck Creek from mouth to headwaters RM 0.5	October 16-May 31
Squire Creek from mouth to headwaters RM 1.2	November 1 to February 15, and May 1-June 30
Jim Creek from mouth to headwaters RM 3.3	December 1-February 15
Canyon Creek from mouth to headwaters RM 5.0	November 15-May 31

WAC 173-505-080 Future stock watering.

(1) The department reserves one-tenth of one cubic foot per second (0.1 cfs) of water for future stock watering. This reserved water can be accessed either from surface water sources or from wells qualifying for ground water withdrawals otherwise exempted from permit requirements under RCW 90.44.050.

(a) Use of water from the reservation shall not be available for feedlots and other activities which are not related to normal grazing land uses.

(b) Appropriation or use of water from the reservation for stock watering shall be limited to the land base and carrying capacity of the grazing lands next to the stream or water course.

(c) The department will maintain a record of the amount of water used from the reservation, and reserves the right to require reporting of water use to ensure compliance with this reservation.

(2) This section does not affect existing riparian stock water rights. The department encourages existing riparian stock water right holders to remove livestock from streams for the purpose of protecting water quality and stream habitat. Under these circumstances, no change application is required, as long as the amount of water diverted to nearby stock-water tanks for consumption by livestock is consistent with the historic use of water by that stock.

WAC 173-505-090 Reservation of permit-exempt ground water for future domestic uses.

(1) The department has weighed the public interest supported by providing a limited amount of water for domestic uses, as defined in WAC 173-505-030(5), with the potential for negative impact to instream flow resources. The department finds that the public interest advanced by this limited reservation clearly overrides the small potential for negative impacts on instream resources (RCW 90.54.020(3)(a)). Based on this finding, the department hereby allocates a total amount of water not to exceed five cubic foot per second (5 cfs) to provide adequate and safe supplies of water for year-round future domestic uses as identified in the following table. Of that 5 cfs, the reservation is further defined by limits on the amount of reserved water that can be withdrawn from the North and the South Forks of the Stillaguamish River.

This reservation of ground water is not subject to the instream flows established in WAC 173-505-050, the lake closures established in WAC 173-505-060 and the stream closures established in WAC 173-505-070.

Control station and river mile (RM)	**Amount of reservation available at specified RM, in cubic feet per second (cfs) and gallons per day (gpd)**
Stillaguamish River at RM 11.2	5 cfs or 3.23 million gpd
Of that 5 cfs, the following maximums may be taken from the specified locations:	
North Fork Stillaguamish River at RM 6.5	2 cfs or 1,292,544 gpd
South Fork Stillaguamish River at RM 24.4	1.5 cfs or 969,408 gpd

(2) Use of water under the reservation is available only if all the conditions set forth in this section are fully complied with. Conditions for use of the reservation water are:

(a) The water reserved shall be for ground water uses exempt from a water right permit application pursuant to RCW 99.44.050. This reservation can provide water for either single or small group domestic uses.

(b) This reservation of ground water shall not exceed 3.23 million gallons of water per day (5 cfs).

(c) Domestic water use shall meet the water use efficiency standards of the uniform plumbing code as well as any applicable local or state requirements for conservation standards.

(d) This reservation shall only be applicable in areas governed by a county ordinance that sets forth the same requirements as subsections a, b, c, e, f and g of WAC 173-505-100(2) as conditions on a water availability determination based upon the reservation, issued pursuant to RCW 19.27.097 and RCW 58.17.110.

(e) Water use under this reservation is not allowed in those areas where a public water system has been established pursuant to RCW 43.20.260, and where the connection can be provided in a timely and reasonable manner. A "timely and reasonable manner" means potable water service can be provided by a purveyor within 120 days of a written request for service, to a property located within the public water system and 500 feet of the purveyor's water pipe line. *[definition of "timely and reasonable" still under discussion]*

(f) Use of water under the reservation shall not continue in those areas where a public water system has been established pursuant to RCW 43.20.260, and where the connection can be provided in a timely and reasonable manner for those entities who previously did not meet subsection (e) above. Any such person must take affirmative action to connect to the public water system no later than 120 days after receiving the department's written order to cease and desist use of the well or surface water source.

(g) No outdoor irrigation shall take place except for a limited amount to irrigate ornamental plants and non-commercial small vegetable gardens.

(3) If a water use is not in compliance with any condition of this reservation, the department may first take action to gain compliance; and subsequently may suspend or terminate any withdrawal not in compliance.

(4) The department reserves the right to require metering and reporting of water use for single domestic users, if more accurate water use data is needed for management of the reservation and water resources in the area of the reservation. Public water system providers will be required to meter, as consistent with the state department of health's requirements.

(5)(a) A record of all ground water withdrawals from the reservation shall be maintained by the department. The record, which will be based on well logs, water availability certificates issued by the counties, or other documents, will readily show both the allocated and unallocated quantities of ground water that are in reserved status. For accounting purposes, the department shall use 350 gallons per day (gpd) per residence or business as the average water use value. This figure shall be adjusted down to 175 gpd if the residence or business is not served by sewer, to take recharge into account.

(b) The department considers 350 gpd to be the average measure of beneficial water use. This amount will be reconsidered if and when sufficient information is collected and verified which demonstrates that the actual daily average use or the associated recharge are other than these amounts.

(6) The reservation is a one-time, limited exception to the instream flows and closures. Once the reservation is fully allocated, it is no longer available. For this closed basin, future water supplies may be available through the development of alternative water sources such as storage, reuse and conservation (WAC 173-505-130).

(7) The department shall notify the appropriate county, in writing, when it determines that 50 percent, 75 percent, and 100 percent respectively of the reservation has been allocated. The department shall also issue a public notice in a newspaper of general circulation for the region at the same three junctures.

(8) If existing county and city land use decisions, including zoning changes and sub-division approvals, allow for increased densities that adversely affect small tributaries and other flow-sensitive areas, the department may limit or restrict the further use of the reservation.

WAC 173-505-100 Maximum allocations.

(1) High flows provide critical ecological functions such as channel and riparian zone maintenance, flushing of sediments, and in and out migration of fish. The protection of the frequency and duration of higher ecological flows can be accomplished by establishing a maximum amount of water/flow that can be withdrawn from the stream above the instream flow levels.

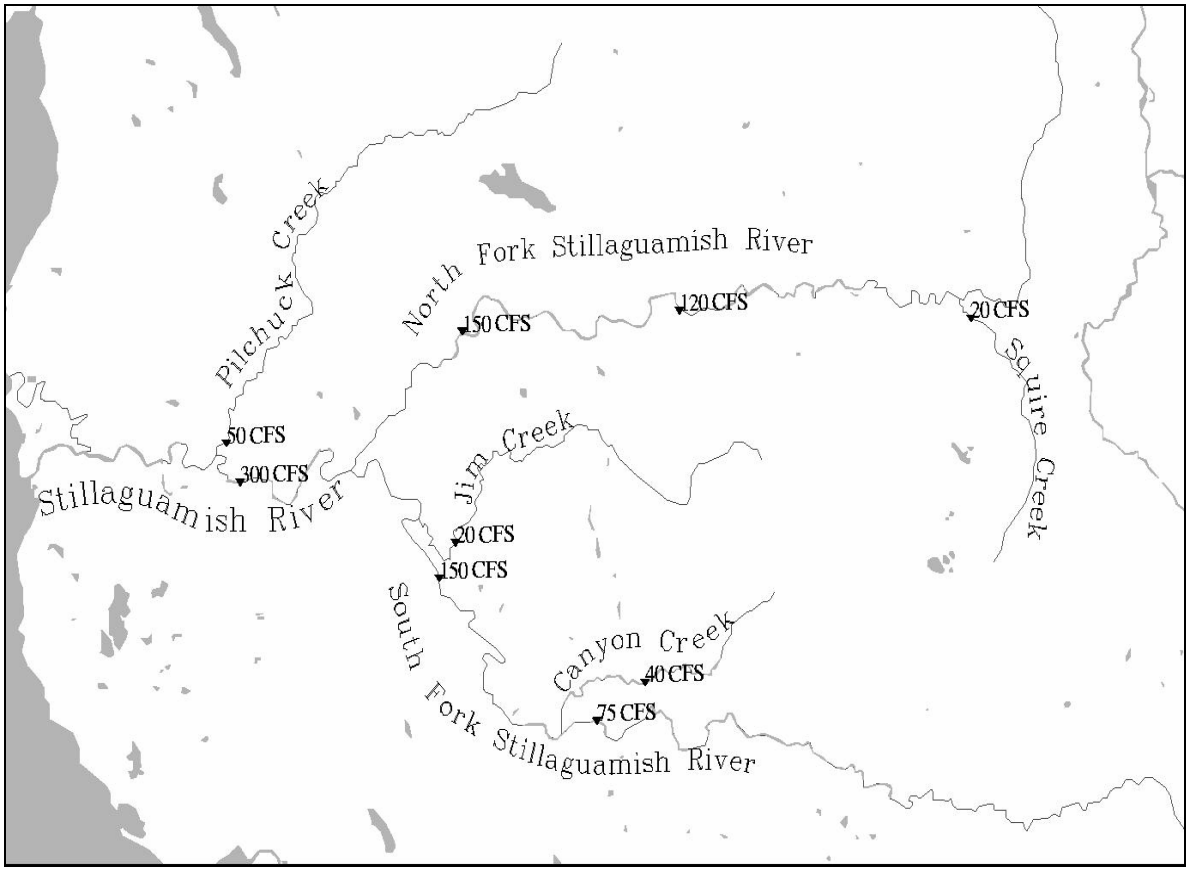
(2) Therefore, the department determines that the total consumptive water rights in the Stillaguamish River basin during non-closed periods shall not exceed a total of 300 cubic feet per second (cfs) as measured at USGS gauge #12167700, river mile 11.2. Of that 300 cfs, the maximum allocation is further defined by limits on the amount of water that can be withdrawn from specified stream reaches, at specific times. Refer to the table and map, below.

Stream reach	Control point	Stream reach description	Maximum allocation	Non-closed period
Stillaguamish Mainstem	Stillaguamish River nr Silvana, USGS Station #12167700, River Mile (RM) 11.2	From the mouth to the confluence of North and South Forks.	300 cfs	October 16-June 30
Of that 300 cfs, the following maximums may be taken from the specified stream reaches at the specified times:				
N.F. Stillaguamish River at Arlington, WA	USGS Station #12167000, RM 6.5	From confluence with the S.F. Stillaguamish to river mile 17.6.	150 cfs	October 16-June 30
N.F. Stillaguamish River at Oso	Ecology Station #05B090 RM 17.6.	From river mile 17.6 to headwaters, except Squire Creek, Deer Creek, and Boulder River.	120 cfs	November 1–June 30
S.F. Stillaguamish River at River Meadows Park	Ecology Station #05A105, RM 24.4.	From confluence with the N.F. Stillaguamish River to RM 34.9, except Jim and Canyon Creeks.	150 cfs	November 1-June 15
S.F. Stillaguamish River at Granite	USGS Station #12161000	From S.F. Stillaguamish River at RM 34.9 to	75 cfs	November 1-

Falls, WA	RM 34.9	headwaters.		March 1
Pilchuck Creek at Bridge 626	Ecology Station #05D070 RM 0.5	From mouth to headwaters, except Lake Cavanaugh.	50 cfs	October 16-May 31
Squire Creek	Ecology Station #05H070 RM 1.2	From mouth to headwaters.	20 cfs	November 1 to February 15, and May 1-June 30
Jim Creek at Whites Road	Ecology Station #05G070 RM 3.3	From mouth to headwaters.	20 cfs	December 1-February 15
Canyon Creek nr. Masonic Park	Ecology Station #05F080 RM 5.0	From mouth to headwaters.	40 cfs	November 15-May 31

N.F.=North Fork **S.F**.=South Fork **cfs**=cubic feet per second **confluence**= the juncture of two or more flowing streams

Maximum allocations for specific stream reaches (listed above) in the Stillaguamish River basin, measured at designated control points



(3) The designation of a maximum allocation does not constitute a determination that water is available, as defined in RCW 90.03.290. A determination of water availability requires the application of four tests: water is available; the use will not impair senior rights; water will be put to beneficial use; and the use is not detrimental to the public interest. Water availability is also governed by existing water rights, including the instream flows established in WAC 173-505-050, and other provisions established in statutory, administrative and case law.

(4) The department will maintain a record of the amount of water allocated from the Stillaguamish basin. When the maximum allocation is fully appropriated for any river, river reach, or stream, the department shall notify the appropriate county, in writing. The department shall also issue a public notice in a newspaper of general circulation for the region stating the maximum allocation is fully allocated.

(5) The department reserves the right to require metering and reporting of water use for single domestic users, if more accurate water use data is needed for water resource management. Public water system providers will be required to meter, as consistent with the state department of health's requirements.

WAC 173-505-110 Future permitting actions.

(1) Surface and ground water permits not subject to the instream flows and closures established in WAC 173-505-050, WAC 173-505- 060 and WAC 173-505-070, may be issued if:

(a) The proposed use is nonconsumptive, and compatible with the intent of this chapter.

(b) The applicant elects to submit a mitigation plan and it is approved by the department. A mitigation plan may be approved if it can show that the withdrawal will not impair senior water rights, including instream flow rights. Mitigation requires that when the natural flow is low, such as in late summer and early fall, any water withdrawn will be replaced by equal or greater amounts of water of comparable quality in the area of the stream affected by the withdrawal. If monitoring of a mitigation plan shows the mitigation is not effective, use of water under the permit shall be subject to the instream flow. In the case of a closed basin, the use shall cease unless a more effective mitigation plan is put in place.

(c) The proposed ground water use will not impair senior water rights. The department has determined that most of the ground water in the Stillaguamish River basin contributes to surface water flows and levels. Therefore a ground water permit that is not subject to the instream flows or closures may only be approved if a project proponent can adequately demonstrate that the proposed ground water use will not impair senior water rights, including the instream flows set in this chapter. The applicant assumes a high burden of proof in showing the lack of impairment, which must be demonstrated through additional studies and technical analysis to the satisfaction of the department.

(2) In very limited situations and for appropriate projects, surface or ground water permits may be issued, subject to instream flows and closures, in one of these two situations:

(a) The applicant is proposing a withdrawal of water for the purpose of storage, from a source open during some portion of the year.

(b) A project proponent can adequately demonstrate to the satisfaction of the department that the proposed withdrawal can be managed to avoid impacts on the instream flows. The project proponent must also describe how their water needs will be met when water is curtailed. This exception is not available for

projects requiring a long-term, reliable and predictable water supply. The water right holder shall accept the risks associated with interruption of supply when the applicable instream flows are not met.

(3) All water right permits approved by the department for a consumptive use from a water source with instream flows established by this rule and during non-closed periods are subject to those instream flows, as described in WAC 173-505-050.

(4) For streams with partial closures the maximum allocation cannot exceed the described limits in WAC 173-505-110.

(5) No right to withdraw, divert or store the public surface or ground waters of the Stillaguamish River basin that conflicts with the provisions of this rule will hereafter be granted, except in cases where such rights will clearly serve overriding considerations of the public interest, as stated in RCW 90.54.020(3)(a).

(6) All future surface and ground water permit holders shall be required to install and maintain measuring devices and report the data to the department in accordance with permit requirements. In addition, the department may require the permit holder to monitor stream flows and ground water levels.

WAC 173-505-120 Alternatives sources of water.

(1) The legislature has long acknowledged that water supply and availability around the state are becoming increasingly limited, particularly during summer and fall months and dry years when demand is greatest. Growth and prosperity have significantly increased the competition for this limited resource (RCW 90.54.090(1)(a)). This chapter provides limited exceptions for new uses in the Stillaguamish River basin. However, there is a continuing need for ongoing and reliable sources for new water uses. This need dictates the continued development and use of alternative sources of water, such as:

- reuse of reclaimed water;
- artificial recharge and recovery;
- multipurpose water storage facilities;
- conservation and efficiency measures applied to existing uses and the transfer of saved water;
- acquisition of existing water rights; and
- establishment of a trust water rights program.

(2) Alternative sources of water of equal or better quality than the proposed source can be used to improve stream flows for fish, offset impacts of withdrawals on stream flows and provide sources of water for future out-of-stream uses.

WAC 173-505-130 Establishment of trust water rights program.

(1) The department will establish a trust water right program to facilitate the acquisition of existing water rights through purchases, long-term leases, donations and conserved water saved through state and federally funded conservation projects.

(2) The determination of how much water should be allocated between future out-of-stream uses and the restoration and enhancement of instream flows will be made at the time the water is acquired and deposited into the trust water rights program.

WAC 173-505-140 Future changes and transfers.

No changes or transfers to existing surface or ground water rights in the Stillaguamish River basin shall hereafter be granted that conflict with the purposes of this chapter. Any change or transfer proposals can be approved only if there is a finding that existing rights, including instream flows hereby established, will not be impaired.

WAC 173-505-150 Compliance and enforcement.

(1) To obtain compliance with this chapter, the department shall prepare and distribute technical and educational information regarding the scope and requirements of this chapter to the public. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws.

(2) When the department determines that a violation has occurred, it shall first attempt to achieve voluntary compliance. An approach to achieving this is to offer information and technical assistance to the person, in writing, identifying one or more means to accomplish the person's purposes within the framework of the law.

(3) To obtain compliance and enforce this chapter, the department may impose such sanctions as appropriate under authorities vested in it, including but not limited to, issuing regulatory orders under RCW 43.27A.190; and imposing civil penalties under RCW 43.83B.335, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.

WAC 173-505-160 Appeals.

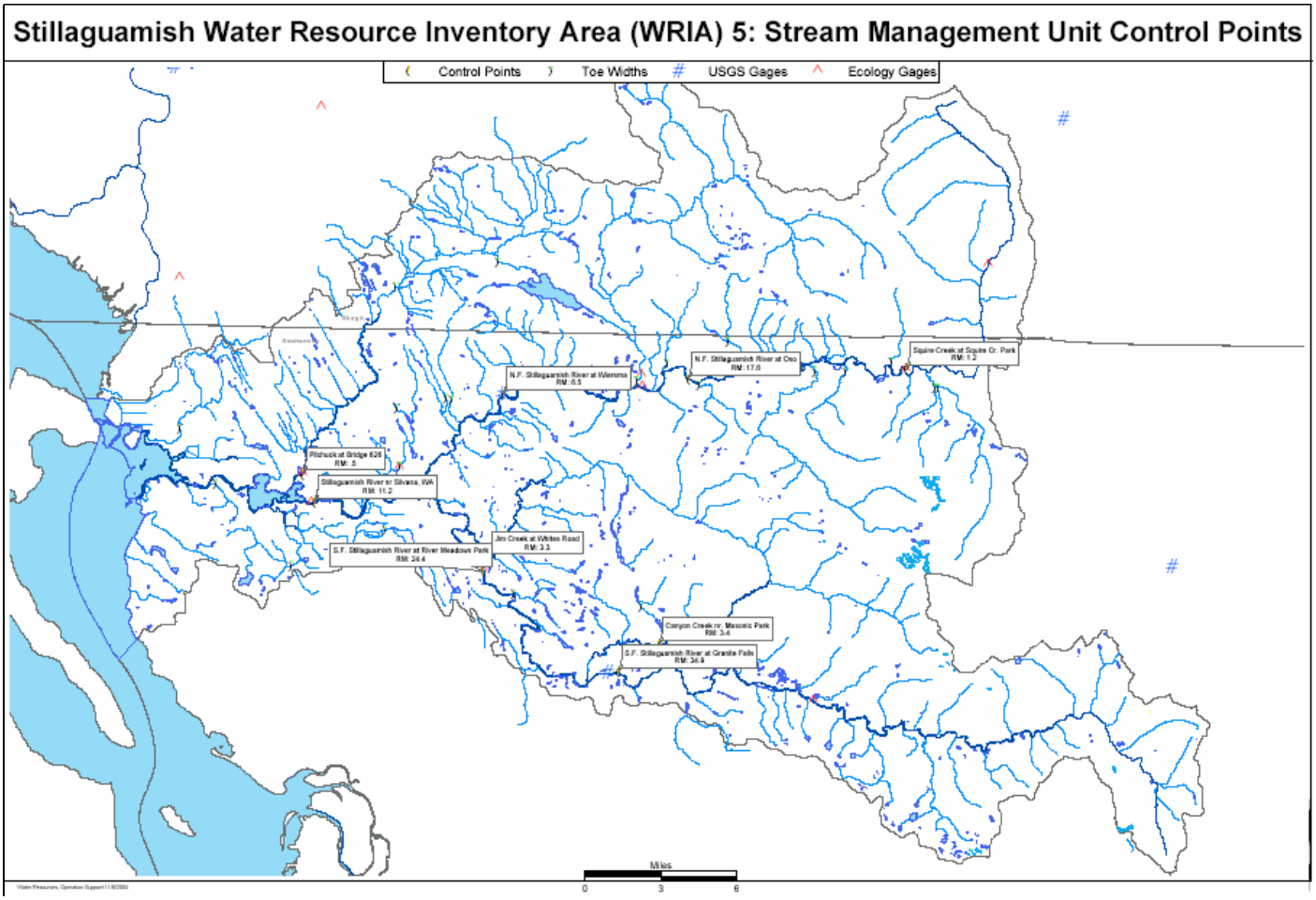
All final written decisions of the department of ecology pertaining to water right applications, permits, certificates, regulatory orders and related decisions made pursuant to this chapter can be appealed to the pollution control hearings board in accordance with chapter 43.21B RCW.

WAC 173-505-170 Regulation review.

Review of this chapter may be initiated by the department whenever significant new information is available, a significant change in conditions occurs, or statutory changes are enacted that are determined by the department to require review of the chapter.

WAC 173-505-180 Map.

For the purposes of administering this chapter, the boundaries of the Stillaguamish Basin and management units contained in the figure below are presumed to accurately reflect the basin hydrology unless demonstrated otherwise.


Stillaguamish Water Resource Inventory Area (WRIA) 5: Stream Management Unit Control Points
Control Points
Toe Widths
USGS Gages
Ecology Gages
N.F. Stillaguamish River at Wenima
RM: 6.5
N.F. Stillaguamish River at Oso
RM: 17.6
Squire Creek at Squire Cr. Park
RM: 1.2
Pilchuck at Bridge 626
RM: 0
Stillaguamish River nr Silvana, WA
RM: 10.2
S.F. Stillaguamish River at River Meadows Park
RM: 24.4
Jim Creek at Whites Road
RM: 3.3
Canyon Creek nr. Masonic Park
RM: 3.4
S.F. Stillaguamish River at Granite Falls
RM: 34.9
Miles
0
3
6